

Case Service Memo: 2003-16

Subject: **Release of Confidential Client Information**
To: All Staff
From: Michael McDonald, Case Service Program Director
Issue Date: October 14, 2003
Effective Date: Existing

Purpose:

The purpose of this Case Service Memo is to expand and clarify previous direction and information given regarding how we respond to requests for confidential client information, either from a client or from a third party; how we release confidential client information; and the standards for documenting such releases. Case Service Manual Chapter 4: Confidentiality has information about the forms for release of confidential client information as well as the timelines and some other information. The following procedural clarifications will be added to the manual:

Release of Confidential Client Information Procedure:

1. In most instances we must have an individual's informed written consent through a valid information release form signed by the individual to discuss or release that individual's confidential client information. We cannot discuss or release an individual's confidential client information unless we have that individual's informed written consent. This is obtained through a signed valid information release form. There are some exceptions for law enforcement and other legal investigations and with regard to potential for harm to self or others. These are noted below. Requests for confidential client information by third party individuals such as from parents, attorneys, physicians, CAP, or others must be in writing using our current information release form dated 4/28/03 or newer or equivalent. We cannot respond to verbal requests for confidential client information from third parties.

NOTE: Court orders and subpoenas for confidential client information involve a different process and are discussed in #12 at the end of this memo and in Case Service Manual Chapter 4: Confidentiality. The documentation of information released and the notification to the individual whose information was released is the same.

2. Requests by clients themselves for their own confidential client information must be in writing using our current information release form dated 4/28/03 or newer, or equivalent forms from other parties which satisfy The Health Insurance Portability And Accountability Act Of 1996 (HIPAA) requirements. The requirements in this memo apply to these requests the same as for third party requests.

NOTE: We are not covered by HIPAA but those requirements have become the de facto standard for information release forms and we have adapted our form to meet those requirements. We cannot respond to verbal requests for confidential client information from clients themselves.

3. We must release confidential client information when it is required by Federal law or regulations. We must also release confidential client information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations. We may also release confidential client information in order to protect the individual or others if the individual poses a threat to his

or her safety or to the safety of others. Requests for confidential client information by police, or other law enforcement related officials, which are made in connection with an official criminal or legal investigation, must be discussed with your supervisor and Case Service Administration prior to any response. Do this as quickly as possible. If possible obtain a case number or other investigatory identifying number when a request is made. In most instances we must respond to requests made in connection with an official investigation. Some of these requests may not require a signed release of information form, and some of them may have other requirements which we may have to meet, such as non-disclosure of release.

Requests for confidential client information which are not made in connection with an official investigation must meet the same requirements as any other request. Those would be handled in the same way as shown in number 1 above.

4. All confidential client information which is to be released ~~must be reviewed~~ for potential harm to the client or others. If such potential for harm exists then the information must be released to another party designated by the individual such as the client's physician, lawyer, or other approved person rather than to the client. All requests for psychological evaluations or other very sensitive medical or personal information should be carefully reviewed for potential for harm and considered for the necessity of release to a third party designated by the individual. Whenever there are questions on these matters call for a consult before you release information for any reason.
5. All confidential client information released, at the request of a client, either to the client or to the client's representative or another designated person, must be reviewed by the counselor or District Director who is authorizing the release prior to actually sending it. If the information is to be released to an attorney or in response to a legal action then it must be reviewed by the District Director prior to sending it. If there are any unusual concerns or information involved then a consult with Case Service Administration should be obtained.
6. Only a counselor, District Director, or other Case Service Administration individual can authorize release of confidential client information. For legal reasons this can't be delegated. A secretary or other support staff may be assigned to gather the materials and prepare them for the District Director review but the actual release must be authorized by either the Counselor or District Director after the counselor or District Director reviews the materials. Case Service Administration may also authorize the release after a review.
7. Certain confidential client information we have obtained from a third party cannot legally be re-released by us to a third party or to the client. This includes information from Social Security, information we obtained which was designated by the original source as not to be re-released, and information which was excluded from re-release by the person signing the release form. Alcohol and drug related information can be, and frequently is, so designated. If there is any question about any of the information requested to be released then consult with your supervisor and Case Service Administration.
8. Make sure that information and the person go together. Be sure to verify that the information to be released belongs to the right person. Verify this by checking the name, the social security number, and other identifying information of both the individual and that on the

information. Sometimes we have several clients with the same or similar name. Be sure to check and verify. If the wrong person's information is released it can be a serious problem.

9. Information release forms can be considered valid only if we can verify the signature of the person who is giving permission to release the information. When we receive forms which are already signed such as those which are faxed or mailed to us we must be able to identify the signature. If we cannot verify the signature or if there is any doubt then we can request an original form and a notarized signature. Consult with your supervisor in such instances.
10. When we release confidential client information the release must be documented in IRIS in the client's case file narrative and we must notify the individual that his or her confidential client information was released. When information requested is with regard to an individual whose case has been closed then the same required documentation must be placed in the hard copy file and include a reference that the person's case had been closed. As can be seen, the purpose of this documentation is to show that we released confidential client information legally. This is done by showing that
 - a. We had a valid release,
 - b. It was the right person's information which was released,
 - c. The information released could be released,
 - d. It was released to the person to whom it was supposed to be released,
 - e. We documented the release as required.
11. The following information must be included in IRIS or, if the case file was closed, the hard copy file. This documentation must also be provided to the individual whose information was released:
 - a. The name of the person requesting the information.
 - b. A reference to the information release form which was provided. A copy of the information release form which was provided to us with the request to release the information must be placed in the case file.
 - c. The client's name and Social Security Number
 - d. A listing or detailed description of the information which was requested and released.
 - e. A listing or detailed description of any information which was requested but not released. Be sure to include the reason it was not released such as it is Social Security information, it is information we obtained which was designated by the original source as not to be re-released, it was excluded by the person signing the release form, etc.
 - f. The date the information was released.
 - g. Who the information was given to or sent to, including to the person whose information was released.

- h. If we have been advised that we cannot legally notify the person whose information was released then there should be a notation saying that and identifying who gave us that advise and direction.
 - i. A note indicating that the District Director or counselor reviewed the information prior to its release.
 - j. Anything unusual or different which may have occurred regarding the release.
12. Responding to a subpoena or a valid court order is a different process for release of confidential client information. When confidential client information is requested by a third party and the authority for obtaining it is through a subpoena or a valid court order no information may be released until a consultation has been held with the Case Service Program Director. This consultation should occur even in those instances when we also receive a signed information release form with the court order or subpoena because in either case we need to make sure we have complied legally. Directions regarding handling of these requests are in Case Service Manual Chapter 4: Confidentiality. In the same manner as shown above, we must provide the same assurances, documentation, and a notification to the person whose information was released. This is the same in all instances where we release confidential client information. There are some rare circumstances, such as in a criminal investigation, when a notification can not be given to the person that his or her confidential client information has been released. In those instances our Attorney General representative will be consulted and will provide direction to us on how to proceed. Consult with your supervisor or the Case Service Program Director whenever an attorney or law enforcement official advises you not to make a notification to the individual, or whenever you have questions in this regard.

Please keep this Case Service Memo in your Case Service Manual until the content of the memo is incorporated into the Manual.